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FLORIDA

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v. Civil No. 8:02-cv-2052-T-23MSS

CAREL A. PRATER, a/k/a CHAD PRATER, d/b/a AERO INVESTMENTS, a purported trust, d/b/a GOLDCOAST ENTERPRISES, a/k/a GOLDENCOAST ENTERPRISES, a purported trust, d/b/a BARTHOLOMEW ENTERPRISES, a purported trust, d/b/a C.A.P. ENTERPRISES, a purported trust, d/b/a TAX INFORMER ENTERPRISES, d/b/a FAMILY VALUES INTERNATIONAL; TAX ESCAPE SERVICE, a purported trust or purported limited liability corporation; NEW FOUND FREEDOM, a purported trust or purported limited liability corporation; and RICHARD W. CANTWELL,

Defendants.
_____/

PRELIMINARY INJUNCTION

The United States of America moves to preliminarily enjoin the defendants from engaging in various abusive tax schemes (Doc. 2). The defendants oppose the motion (Doc. 19).[1] An evidentiary hearing on the motion occurred on December 17, 2002.

Standards for Preliminary Injunction. In order to obtain a preliminary injunction pursuant to 26 U.S.C. (Internal Revenue Code, I.R.C.) §§ 7407 and 7408, the

[1]The defendants have filed a "Motion Relating to Length of Response" (Doc. 9), which the Court construes as a motion to file a response to the United States's preliminary injunction motion in excess of the twenty page limit established by the Local Rules. Due to the brief interval between the filing of the motion and the December 17, 2002, hearing on the preliminary injunction, the motion (Doc. 9) is **GRANTED**. Future filings shall comply with the Local Rules.

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United States must show that (1) defendants engaged in conduct subject to penalty under I.R.C. §§ 6694, 6695, 6700, or 6701; or that (2) defendants engaged in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws; or that (3) injunctive relief is appropriate to prevent the recurrence of such conduct.

To obtain a preliminary injunction pursuant to I.R.C. § 7402, the United States must show (1) a substantial likelihood of success on the merits; (2) a substantial threat of irreparable injury to the United States if the injunction is not granted; (3) that the threatened injury to the United States outweighs the harm an injunction may cause the defendants; and (4) that granting the injunction would not disserve the public interest. See United States v. Ernst and Whinney, 735 F.2d 1296, 1301 (11th Cir. 1984) ("the decision to issue an injunction under [I.R.C.] § 7402(a) is governed by the traditional factors shaping...the use of the equitable remedy"); American Red Cross v. Palm Beach Blood Bank, Inc., 143 F.3d 1407, 1410 (11th Cir. 1998) (listing the equitable factors for a preliminary injunction).

Findings of Fact and Conclusions of Law. Based on the evidence and the parties' arguments, the Court finds as follows:

- Defendants (1) Carel E. "Chad" Prater, individually and through his associated entities Aero Investments, Goldcoast Enterprises, Goldencoast Enterprises, Bartholomew Enterprises, C.A.P. Enterprises, Tax Informer Enterprises, Family Values International, Tax Escape Service, New Found Freedom ("associated entities"), and (2) Richard Cantwell promote abusive tax schemes based on the so-called "§ 861 argument," a meritless position that domestic income is not subject to the federal income tax, and make other false and fraudulent representations regarding tax law. They promote their schemes through seminars,

newspaper advertisements, a book, and a website, and charge clients for products and services related to their abusive tax schemes.

- Prater, Cantwell, and the associated entities promote, and Prater and the associated entities file, putative legal documents, which are actually nullities but which Prater calls "*nihil dicit* judgments" against the IRS, by which judgments the defendants falsely claim to bar the IRS from collecting taxes from their clients.

- Prater and Cantwell falsely advise clients, individually and through seminars and written materials, to cease filing federal income tax returns (IRS Forms 1040) and paying federal income tax.

- Prater, Cantwell, and the associated entities sell sham trusts, called Unincorporated Business Trust Organizations (UBTOs) or Unincorporated Personal Trusts (UPTs), and falsely advise their clients that by placing the clients' assets and income into these trusts the clients can avoid federal income tax.

- Prater, Cantwell, and the associated entities promote, and Prater and the associated entities set up, limited liability corporations (LLCs) structured to obscure their clients' identities. Prater, Cantwell, and the associated entities falsely instruct their clients that by moving the clients' assets and income between these LLCs and the UBTOs the clients can avoid federal income tax.

- Prater and the associated entities prepare and file federal income tax returns (IRS Forms 1040), falsely claiming that their clients have no taxable income and are not liable for federal income tax. Prater and his staff fail to sign their own names to these returns and fail to provide their identifying numbers, in violation of 26 U.S.C. § 6695.

- Prater and his associated entities prepare and file amended federal income tax returns (IRS Forms 1040X), falsely claiming that their clients' previous returns were filed in error and requesting a refund of paid taxes. Prater and his staff fail to sign their own names to these returns and fail to provide their identifying numbers on them.

- Prater and his associated entities prepare and submit to their clients' employers Employee's Withholding Allowance Certificates (IRS Forms W-4) and statements in lieu of IRS Form W-4 falsely claiming that their clients are exempt from withholding tax.

- The returns, amended returns, and W-4s that Prater and his associated entities have prepared are based on an unrealistic position, the § 861 argument, which concludes that the defendants' clients are not liable for tax on domestic-source income, and which yields a gross understatement of his clients' tax liability.

- Prater misleads his clients and the IRS by claiming that he is qualified to represent clients before the IRS; Prater induces his clients to execute Power-of-Attorney and Declaration of Representation Forms (IRS Forms 2848), purportedly granting him authority to represent them by falsely asserting that he is his clients' full-time employee.

- Prater interferes with the administration of the internal revenue laws by attempting to block IRS examination and collection efforts through frivolous correspondence and mock legal documents.

- Prater and Cantwell have continued to promote their abusive tax schemes even after learning that they are under IRS investigation and after the IRS executed a search warrant on their business premises. Cantwell has stated his intention to continue his abusive tax activity after learning that he is under IRS investigation for promoting abusive tax schemes.

- Absent this preliminary injunction, Prater and Cantwell will continue to promote the abusive tax scheme.

- If this injunction is not granted, the United States will suffer irreparable harm because Prater advises his clients to not file returns, to file returns falsely claiming no income, to file amended returns demanding a refund of paid taxes, to stop their employers from withholding taxes from their paychecks, and to hide their income from the IRS in sham trusts and LLCs. Further, substantial resources of the United States are expended reviewing and dealing with Prater-prepared returns, amended returns, and correspondence.

- The § 861 argument is frivolous and without merit.[2] Prater and Cantwell knew or should have known that their representations regarding the § 861 argument and the tax benefits to be derived from participation in their scheme are false because (1) the § 861 argument is frivolous on its face, (2) numerous judicial decisions reject the § 861 argument and abusive trusts such as Prater's, (3) the IRS has issued numerous public documents explaining the invalidity of the § 861 argument, (4) Prater and Cantwell kept copies of an IRS public notice regarding frivolous tax arguments and a press article describing injunction actions against others who promoted schemes similar to his own, and (5) Prater holds himself out (that is, palms himself off) as an expert in tax law.

- Prater and his associated entities have filed with the IRS documents, including frivolous W-4 Forms, 1040 Forms, 1040X Forms, that relate to a material tax matter and that Prater knew would, if accepted, result in an understatement of tax liability. Prater's submission of these forms and other frivolous documents to the IRS has substantially interfered with the administration of the internal revenue laws.

- Prater and the associated entities have substantially interfered with the administration of the tax laws by pressuring employers to cease withholding taxes from their clients' wages and by pressuring others to reject IRS collection efforts.

- In sum, the record reveals that Prater, Cantwell, and the associated entities have engaged in conduct in violation of I.R.C. §§ 6700, 6694, 6695, and 6701.[3] Therefore, the United States will likely prevail on the

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[2]See United States v. Rosile, No. 8:02-cv-466-T-24MSS, 2002 WL 1760861, at *2 (M.D. Fla. June 10, 2002); United States v. Bossett, No. 8:01-cv-2154-T-17TBM, 2002 WL 1058105, at *3 (M.D. Fla. March 26, 2002).

At the hearing on the motion for a preliminary injunction, the defendants proffered the testimony of Larken Rose, a purported expert on the § 861 argument. The defendants also submitted as an exhibit "Theft By Deception," an instructional video on the § 861 argument prepared by Mr. Rose. Because Mr. Rose qualifies neither as a lay witness under Rule 701 nor as an expert witness under Rule 702, Federal Rules of Evidence, Mr. Rose's testimony and the instructional video are excluded. Nevertheless, having carefully viewed "Theft by Deception," I confidently retain the conviction that the § 861 argument is frivolous and illogical.

[3]The record reveals that a subscription to one of the defendants' various tax schemes costs the client up to $20,000. The record further reveals that the defendants' implementation of the various abusive tax schemes has resulted thus far in an estimated potential tax loss to the United States of roughly $18 million. This matter acquires a heightened urgency and implies more serious consequences

(continued...)

merits. Further, the record demonstrates that Prater, Cantwell, and the associated entities will continue to violate I.R.C. §§ 6700, 6694, 6695, and 6701 absent the entry of a preliminary injunction.

- This injunction is tailored to prevent Prater, Cantwell, and the associated entities from causing further injury and from further violating the law. Thus, the threatened injury to the United States outweighs any injury an injunction might cause to defendants.

- The public interest is served by granting this injunction. This preliminary injunction helps stem the spread of, and protects the public from, defendants' frivolous arguments and fraudulent tax schemes.

Accordingly, the United States' motion for a preliminary injunction (Doc. 2) is **GRANTED**. Pursuant to of I.R.C. §§ 7402, 7407, and 7408, Prater and Cantwell (either individually or doing business through any entity), their representatives, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice of this order are enjoined from:

a. Engaging in activity subject to penalty under I.R.C. § 6701, including preparing and/or assisting in the preparation of a document related to a matter material to the internal revenue laws that includes a position that they know will result in an understatement of tax liability;

b. Advocating, through seminars, websites, consultations, and the preparation of income, employment, and corporate tax returns and claims for refund, the false and frivolous position that U.S.-source income is nontaxable (the § 861 argument);

c. Filing so-called judgments *nihil dicit* or default judgments against the Internal Revenue Service, the United States of America, or any agency, department, or instrumentality of the United States of America;

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[3](...continued)
beginning January 1, 2003, when the taxpayers begin preparing and filing their tax returns for the tax season that persists through April 15, 2003.

d. Selling any type of trust, limited liability corporation, or similar arrangement, which advocates noncompliance with the income tax laws or tax evasion, misrepresents the tax savings realized by using the arrangement, or conceals the ownership or receipt of income;

e. Representing, offering to represent, or claiming an ability to represent any other person in any tax matter before the Internal Revenue Service or any court;

f. Corresponding with, or assisting in the preparation of any correspondence or other documents to be sent to, the Internal Revenue Service on behalf of any other person in exchange for payment (including for those who paid for any other tax-related services);

g. Preparing or assisting in the preparation of any tax-related document to be sent to any other person or entity, including an employer, on behalf of any other person in exchange for payment (including for those who paid for any other tax-related services);

h. Preparing or assisting in the preparation of federal tax returns for any other person or entity;

i. Promoting, marketing, organizing, or selling any plan or arrangement regarding the excludibility of income that they know or have reason to know is false or fraudulent as to any material matter. Accordingly, the defendants shall remove from their websites all abusive-tax-scheme promotional materials and materials designed to incite or induce others imminently to violate the tax laws.

j. Engaging, directly or indirectly, in any other activity subject to penalty under I.R.C. §§ 6694, 6695, 6700, or 6701; and

k. Engaging in other similar conduct that substantially interferes with the proper administration and enforcement of the internal revenue laws.

Further, the Court **ORDERS** that Prater, his associated entities, and Cantwell provide their complete client list from January 1, 1997 through the present, including names, addresses, phone numbers, e-mail addresses, and social security numbers or employer identification numbers, to counsel for the United States within ten days of the

date of this order. Prater and Cantwell must each individually file a sworn certificate of compliance, each swearing that he has complied with this portion of the order, within ten days of the date of this order.

ORDERED in Tampa, Florida, on December 19th, 2002, at 4:21 p.m.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

F I L E C O P Y

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